

IN THE DRAWINGS

Applicant has submitted herewith replacement drawings for the Office's consideration.

REMARKS

Applicant respectfully requests reconsideration and allowance of the subject application. The amendments to the claims presented herein are made solely for the purpose of expediting the prosecution of the instant Application. Applicant respectfully traverses the rejections of the current Office Action.

Drawings Objection

The Office objected to the drawings filed on June 22, 2004. Filed herewith is a new set of replacement drawings, labeled as such, for the Office's consideration. Applicant respectfully submits that the replacement drawings filed herewith obviate the Drawings Objection.

Claim Rejections Under 35 U.S.C. § 101

Claims 29-56 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Regarding **claims 36-42**, each of the remaining rejected claims is amended hereby to recite "computer-storage medium." Accordingly, Applicant respectfully submits that the rejection is now moot.

Regarding **claims 29-35**, it appear the Office interprets the claimed "method" as "software, per se." The Applicant does not understand how this conclusion was reached. In particular, independent claim 29 recites a "method for streaming media through at least a portion of a network..." (Emphasis added.) As those of ordinary skill in the art appreciate, "a network" is not "software, per se." A network is generally one or more hardware devices (e.g., routers) that generally includes various computer related components, such as a processor, storage media, and the like. Therefore, the Office's basis for rejecting claim 29 is incorrect.

Claims 31-35 depend from claim 29. Accordingly, for at least the same reasons argued in connection with claim 29, the Office's basis for rejecting claims 30-35 is also flawed.

Claims 43, 45-50 and 52-56 recite various hardware related subject matter. Therefore, these claims may not be interpreted as "software, per se" and thus the claims are directed to statutory subject matter.

In accordance with the foregoing, the Office is respectfully requested to reconsider and withdraw the rejection under Section 101.

Claim Rejections Under 35 U.S.C. § 112

Claims 29-56 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant respectfully traverses the rejection.

The Office states that "the network" in claims 29, 36 and 43 lacks antecedent basis. However, each of the rejected claims recites "a network" before the recitation "the network". See, for example, claim 29, line 2, claim 36, line 4, and claim 43, line 7. Thus, Applicant respectfully submits that "the network", recited in each of the discussed claims, has proper antecedent basis.

Applicant has carefully reviewed the remaining claims and finds the recitations thereof are not indefinite. However, the Examiner is hereby authorized, without the need of further contact by the Examiner, to enter an Examiner's Amendment to correct any cases where antecedent basis are lacking.

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

Nonstatutory Double Patenting Rejection

Claims 29-56 are rejected under the judicially created Nonstatutory Double Patenting doctrine over U.S. Patent No. 6,763,392. Applicant hereby submits a properly executed Terminal Disclaimer with this Response. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of the rejection.

Claim Rejections Under 35 U.S.C. § 102

Claims 29-56 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Chou, U.S. Patent No. 6,637,031 (hereinafter "Chou"). Applicant respectfully traverses the rejection.

As indicated, several rejected claims are canceled hereby. Thus, the rejections of the canceled claims are not discussed in further detail herein.

Amended independent claim 29 recites:

A method for streaming media through at least a portion of a network, the method comprising:

transferring an initial portion of a stream of data from a first device to at least a second device through an interconnecting network;

establishing a desired quality of service path within at least a portion of the network from the first device to the second device; and

transferring a subsequent portion of the stream of data over the established quality of service path from the first device to the second device,

wherein transferring the initial stream of data from the first device to the second device occurs, at least partially, while establishing the quality of service path. (Emphasis added.)

Applicant carefully considered the entire text of Chou and was unable to find any disclosure that anticipates at least "wherein transferring the initial stream

of data from the first device to the second device occurs, at least partially, while establishing the quality of service path," as recited in the above-reproduced claim 29.

Chou discloses a system that provides at least two different audio/video data streams. The first data stream has few bits per frame and the second data stream has a higher number of bits per frame. The first data stream is designed to reach a recipient faster than the second data stream (*See Abstract of Chou.*) However, Chou does not disclose transferring the first data stream occurs while "establishing a quality of service path" that will be used to transmit the second data stream, as is claim in claim 29. The Office asserts that the disclosure "the second data stream is sent to improve quality as soon as the playback buffer can handle it" is the same as the foregoing subject matter indicated from claim 29. (*See Office Action, page 5, point 18.*) However, sending the "second data stream" when "the playback buffer" is ready is not the same as "transferring the initial stream of data from the first device to the second device occurs, at least partially, while establishing the quality of service path," as is recited in claim 29.

Therefore, for at least the reasons stated above, Applicant respectfully requests the Office to reconsider and withdraw the rejection of claim 29.

Dependent claims 31-35 depend from claim 29. The rejection with regard to these claims should be withdrawn by virtue of the dependency. Moreover, these claims recite features that, when taken together with those of claim 29, are not disclosed by Chou.

Amended independent claim 36 recites:

A computer-storage medium having computer-executable instructions stored thereon for causing at least one processing unit to perform acts comprising:

streaming media through at least a portion of a network by:

transferring an initial portion of a stream of data from a first device to at least a second device through an interconnecting network;

establishing a desired quality of service path within at least a portion of the network from the first device to the second device; and

transferring a subsequent portion of the stream of data over the established quality of service path from the first device to the second device,

wherein transferring the initial stream of data from the first device to the second device occurs, at least partially, while establishing the quality of service path. (Emphasis added.)

Applicant carefully considered the entire text of Chou and was unable to find any disclosure that anticipates at least "wherein transferring the initial stream of data from the first device to the second device occurs, at least partially, while establishing the quality of service path," as recited in the above-reproduced claim 36.

Chou discloses a system that provides at least two different audio/video data streams. The first data stream has few bits per frame and the second data stream has a higher number of bits per frame. The first data stream is designed to reach a recipient faster than the second data stream (*See Abstract of Chou.*) However, Chou does not disclose transferring the first data stream occurs while "establishing a quality of service path" that will be used to transmit the second data stream, as is claim in claim 36. The Office asserts that the disclosure "the second data stream is sent to improve quality as soon as the playback buffer can

handle it" is the same as the foregoing subject matter indicated from claim 36. (*See Office Action, page 5, point 18.*) However, sending the "second data stream" when "the playback buffer" is ready is not the same as "transferring the initial stream of data from the first device to the second device occurs, at least partially, while establishing the quality of service path," as is recited in claim 36.

Therefore, for at least the reasons stated above, Applicant respectfully requests the Office to reconsider and withdraw the rejection of claim 36.

Dependent claims 38-42 depend from claim 36. The rejection with regard to these claims should be withdrawn by virtue of the dependency. Moreover, these claims recite features that, when taken together with those of claim 36, are not disclosed by Chou.

Amended independent claim 43 recites:

An apparatus suitable for use in streaming media within a network environment, the apparatus comprising:
memory containing media data; and
logic operatively coupled to the memory and configurable to:
transfer an initial portion of the media data as a stream of data to at least one device through a network,
establish a desired quality of service path within at least a portion of the network, and
transfer a subsequent portion of the media data as a subsequent stream of data over the established quality of service path,
wherein the logic is further configurable to simultaneously transfer the initial portion of the media data and establish the desired quality of service path. (Emphasis added.)

Applicant carefully considered the entire text of Chou and was unable to find any disclosure that anticipates at least "wherein the logic is further

configurable to simultaneously transfer the initial portion of the media data and establish the desired quality of service path," as recited in the above-reproduced claim 43.

Chou discloses a system that provides at least two different audio/video data streams. The first data stream has few bits per frame and the second data stream has a higher number of bits per frame. The first data stream is designed to reach a recipient faster than the second data stream (*See Abstract of Chou.*) However, Chou does not disclose transferring the first data stream simultaneously while "establishing a quality of service path" that will be used to transmit the second data stream, as is claim in claim 43. The Office asserts that the disclosure "the second data stream is sent to improve quality as soon as the playback buffer can handle it" is the same as the foregoing subject matter indicated from claim 43. (*See Office Action, page 5, point 18.*) However, sending the "second data stream" when "the playback buffer" is ready is not the same as having "logic [that] is further configurable to simultaneously transfer the initial portion of the media data and establish the desired quality of service path," as is recited in claim 43.

Therefore, for at least the reasons stated above, Applicant respectfully requests the Office to reconsider and withdraw the rejection of claim 43.

Dependent claims 45-49 depend from claim 43. The rejection with regard to these claims should be withdrawn by virtue of the dependency. Moreover, these claims recite features that, when taken together with those of claim 43, are not disclosed by Chou.

Amended independent claim 50 recites:

An apparatus suitable for use in streaming media
within a network environment, the apparatus comprising:

memory suitable for storing received media data; and
logic operatively coupled to the memory and
configurable to:
receive an initial portion of streamed media data
through a network,
establish a desired quality of service path within at
least a portion of the network, and
receive a subsequent portion streamed media data over
the established quality of service path,
*wherein the logic is further configurable to
simultaneously receive the initial portion of streamed media
data and establish the desired quality of service path.*
(Emphasis added.)

Applicant carefully considered the entire text of Chou and was unable to find any disclosure that anticipates at least "wherein the logic is further configurable to simultaneously transfer the initial portion of the media data and establish the desired quality of service path," as recited in the above-reproduced claim 50.

Chou discloses a system that provides at least two different audio/video data streams. The first data stream has few bits per frame and the second data stream has a higher number of bits per frame. The first data stream is designed to reach a recipient faster than the second data stream (*See Abstract of Chou.*) However, Chou does not disclose transferring the first data stream simultaneously while "establishing a quality of service path" that will be used to transmit the second data stream, as is claim in claim 50. The Office asserts that the disclosure "the second data stream is sent to improve quality as soon as the playback buffer can handle it" is the same as the foregoing subject matter indicated from claim 50. (*See Office Action, page 5, point 18.*) However, sending the "second data stream" when "the playback buffer" is ready is not the same as having "logic [that] is

further configurable to simultaneously transfer the initial portion of the media data and establish the desired quality of service path," as is recited in claim 50.

Therefore, for at least the reasons stated above, Applicant respectfully requests the Office to reconsider and withdraw the rejection of claim 50.

Dependent claims 52-56 depend from claim 50. The rejection with regard to these claims should be withdrawn by virtue of the dependency. Moreover, these claims recite features that, when taken together with those of claim 50, are not disclosed by Chou.

Conclusion

In accordance with the foregoing remarks, Applicant believes that the pending claims are allowable and the application is in condition for allowance. Therefore, a Notice of Allowance is respectfully requested. Should the Examiner have any further issues regarding this application, the Examiner is requested to contact either of the attorneys listed below.

Respectfully Submitted,

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